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1 Plaintiff/Counter-Defendant, Neofonie GmbH (“Neofonie”), hereby  
 2 submits the following response to the “Status Update” filed by  
 3 Defendant/Counter-Plaintiff, Artissimo Designs LLC (“Artissimo”), (Dkt.  
 4 No. 83).<sup>1</sup>

5 **A. NEOFONIE ATTEMPTED TO COMPLY WITH THE**  
 6 **COURT’S ORDER TO PARTICIPATE IN A SETTLEMENT**  
 7 **CONFERENCE.**

8 On September 16, 2019, the Court ordered the parties to, among other  
 9 things, make a good faith effort to settle the case and participate in a  
 10 settlement conference before the agreed upon Mediator within 30 days of the  
 11 Court’s order. (See Dkt. No. 77). After the order was filed, Neofonie  
 12 attempted to comply with the order by researching and suggesting potential  
 13 mediators and providing dates to Defendant’s counsel on which a settlement  
 14 conference could take place. (See Declaration of Sacha V. Emanuel ¶¶ 5, 7,  
 15 8, 9, 10, 14 and Exhibits A, B, C, D, E and F).

16 **B. DEFENDANT AND/OR ITS COUNSEL FAILED TO**  
 17 **COMPLY WITH THE COURT’S ORDER BY INSISTING**  
 18 **THAT NEOFONIE COMPLY WITH CERTAIN IMPROPER**  
 19 **CONDITIONS AS A PREREQUISITE TO ATTENDING A**  
 20 **SETTLEMENT CONFERENCE.**

21 Defendant’s counsel refused to agree upon a mediator or a date for a  
 22 settlement conference unless Neofonie, who is based in Germany, agreed to  
 23 fly a representative to Los Angeles to attend the settlement conference in  
 24 person. In support of his position, counsel cited Local Rule 16-15.5(b).  
 25 However, L.R. 16-15.5(b) provides in pertinent part that:

26  
 27 <sup>1</sup> Artissimo’s 11 page status update is essentially an improper motion that  
 28 does not comply with the Local Rules or Scheduling Order. For these  
 reasons, it should be stricken.

1        “At the discretion of the settlement officer, and only with the  
2        settlement officer’s express authorization, parties residing outside the  
3        District may have a representative with final settlement authority  
4        available by telephone during the entire proceeding, in lieu of personal  
5        appearance.”

6        Neofonie, who resides over five thousand miles outside of the Central  
7        District, is authorized to have a representative with final settlement authority  
8        attend the mediation telephonically as long as the settlement officer  
9        authorizes it. In fact, this is how the parties proceeded at the last settlement  
10      conference which Neofonie attended by video conference. Neofonie had  
11      three representatives in attendance for the entire settlement conference at  
12      least one of whom had final settlement authority. Neofonie’s appearance by  
13      video conference, in lieu of personal appearance, had nothing to do with a  
14      settlement not being reached. (See Emanuel Dec. ¶6).

15      Despite the Local Rule allowing Neofonie to participate in a  
16      settlement conference by telephone, Defendant’s counsel refused to  
17      agree upon a mediator or attend a mediation unless a representative  
18      from Neofonie appeared in person. (See Emanuel Dec. ¶11). Neofonie’s  
19      counsel explained that it would be a financial hardship for Neofonie  
20      to send a representative and that it was not required to do so by Local  
21      Rule or Order of the Court. Counsel for Neofonie also suggested that the  
22      parties agree upon a mediator and let him or her recommend how the  
23      attendance should work. (See Emanuel Dec, Exhibit F). Defendant’s  
24      counsel, however, ignored the Local Rule, the Court’s Order, and the  
25      suggestions of Neofonie’s counsel and continued demanding that Neofonie  
26      appear at the mediation in person. He also refused to convey any  
27      settlement offers to Neofonie despite Neofonie’s request that one  
28      be conveyed and the court’s Order that the parties attempt to settle.

**C. DEFENDANT'S COUNSEL FAILED TO SEND THE STATUS UPDATE TO NEOFONIE'S COUNSEL PRIOR TO FILING IT IN AN ATTEMPT TO MISLEAD THE COURT.**

On October 14, 2019, counsel for Neofonie suggested to Defendant’s counsel that any update regarding the mediation process that Defendant’s counsel insisted upon filing be joint. Along these lines, counsel for Neofonie requested that he be sent the status update so he could include Neofonie’s response therein. (See Emanuel Dec. ¶15). Rather than sending counsel for Neofonie the update, counsel for Defendant filed the update in an attempt to mislead the Court into believing that Neofonie did not comply with the Court’s Order and chose not to participate in the preparation of the update.

## D. CONCLUSION

Neofonie attempted to comply with the Court's Order and remains willing to attend a settlement conference in accordance with the Order and Local Rules. Because it is a financial hardship for Neofonie to attend a settlement conference in person, Neofonie should be permitted to attend the settlement conference telephonically or by video conference and will request that the settlement officer allow it to attend in this manner.

Dated: October 16, 2019

Respectfully submitted,  
EMANUEL LAW FIRM

By: *Sacha V. Emanuel*

Sacha V. Emanuel  
*Attorneys for Plaintiff/Counter-  
Defendant Neofonie GmbH*